

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMERICAN MANAGEMENT
SERVICES EAST LLC, et al.,

Plaintiffs,

v.

SCOTTSDALE INSURANCE
COMPANY, et al.,

Defendants.

C15-1004 TSZ

ORDER

THIS MATTER comes before the Court on defendant Scottsdale Insurance Company's ("Scottsdale") unopposed motion for summary judgment, docket no. 113. Having reviewed the motion and relevant filings, the Court enters the following Order.

Background¹

Plaintiffs² collectively developed and managed military housing projects for the U.S. Army in Georgia, Virginia, and California pursuant to a variety of contractual

¹ The Court includes only an abbreviated summary of the background because the parties are familiar with the facts of this case and the Court's prior Order on the parties' cross-motions for summary judgment, docket no. 90, included a full recitation of the factual background.

² Plaintiffs are comprised of a number of management companies and two of their CEOs.

1 arrangements made with certain entities controlled by Clark Realty Capital (“Clark”).
2 Defendant Scottsdale provided plaintiffs with general commercial liability coverage from
3 April of 2008 until April of 2012.

4 In 2010, entities controlled by Clark filed suit in Georgia against two of the
5 plaintiffs in this action, American Management Services East LLC and American
6 Management Services LLC. The lawsuit sought a declaratory judgment that the parties’
7 Property Management Agreements (“PMAs”) were terminated “for cause” and to recover
8 damages caused by the alleged fraud which precipitated the termination of the PMAs.
9 Stipulated Exhibits (“Stip. Exs.”), Ex. 11, docket no. 51 (Georgia Complaint). In 2011,
10 various entities controlled by Clark brought a similar suit in California seeking
11 declaratory and injunctive relief.³ Stip. Exs., Ex. 17, docket no. 51-6 (California
12 Complaint).

13 Plaintiffs tendered the defense of these actions to Scottsdale, but Scottsdale denied
14 coverage of the claims. *See* Stip. Exs., Ex. 29, docket no. 52-1 (first denial of coverage in
15 the Georgia action); Ex. 30, docket no. 52-2 (denial of coverage in the California action);
16 Ex. 32, docket no. 52-3 at 4-7 (second denial of coverage in the Georgia action).
17 Thereafter, plaintiffs submitted additional, extrinsic evidence to Scottsdale and argued
18 that the evidence demonstrated that the lawsuits fell within the policies’ coverage. After
19 reviewing the extrinsic evidence, Scottsdale reaffirmed its denial of coverage. Stip. Exs.,
20 Ex. 36, docket no. 52-4 at 1-29.

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22 ³ This Order refers to these lawsuits collectively as the “underlying litigation.”
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1 On June 22, 2015, plaintiffs filed this suit, alleging causes of action for declaratory
2 relief, breach of contract, insurance bad faith, and violations of the Insurance Fair
3 Conduct Act (“IFCA”) and Consumer Protection Act (“CPA”). The parties filed cross-
4 motions for partial summary judgment on the issue of whether Scottsdale had a duty to
5 defend plaintiffs in the underlying litigation. *See* docket nos. 53, 59. On April 18, 2016,
6 this Court denied plaintiffs’ motion and granted Scottsdale’s motion, finding that
7 Scottsdale owed no duty to defend plaintiffs because the claims alleged in underlying
8 litigation were not covered under the policies issued by Scottsdale. *See* docket no. 90.

9 **Discussion**

10 Scottsdale argues that this Court’s ruling on the duty to defend disposes of
11 plaintiffs’ remaining claims for breach of contract, insurance bad faith, and violations of
12 the IFCA and CPA. Certainly, the absence of coverage and an accompanying duty to
13 defend disposes of plaintiffs’ claims for breach of contract and violation of the IFCA.
14 Under IFCA, an unreasonable denial of coverage or payment of benefits is a prerequisite
15 to insurer liability. *See Hover v. State Farm Mut. Auto Ins. Co.*, No. 13-CV-05113-SMJ,
16 2014 WL 4546048, at *2 (E.D. Wash. Sept. 12, 2014) (“[A]n unreasonable denial of a
17 claim for coverage or payment of benefits is the only way a plaintiff may establish
18 liability under the IFCA.” (citing RCW 48.30.015(1)); *see also Cardenas v. Navigators*
19 *Ins. Co.*, No. C11-5578 RJB, 2011 WL 6300253, at *6 (W.D. Wash. Dec. 16, 2011)
20 (collecting cases). Similarly, plaintiffs’ breach of contract claim is predicated solely on
21 an allegation that Scottsdale denied coverage owed under the policies. Given this Court’s
22 ruling that coverage did not extend to the claims alleged in the underlying litigation,
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1 plaintiffs' breach of contract and IFCA claims fail as a matter of law because Scottsdale
2 did not contravene obligations imposed by the policies or unreasonably deny coverage
3 owed.

4 Plaintiffs' claims for insurance bad faith and violation of the CPA, on the other
5 hand, are potentially still viable, as neither is based solely on an allegation that
6 defendants denied coverage owed under the policies.⁴ However, it appears that plaintiffs
7 now intend to limit their extra-contractual claims to those arising from the duty to defend.
8 In their response to Scottsdale's motion, docket no. 118, plaintiffs' agree with Scottsdale
9 that "[t]his Court's April 18, 2016, ruling disposes of plaintiffs' claims" because each of
10 those claims is "dependent upon a ruling that the defendant insurance companies owed
11 plaintiffs a duty to defend" the underlying litigation. Accordingly, Scottsdale's motion
12 for summary judgment, docket no. 113, is GRANTED. Plaintiffs' remaining claims
13 against Scottsdale for breach of contract, insurance bad faith, and violations of the IFCA
14 and CPA are DISMISSED with prejudice.

15 The Clerk is DIRECTED to enter judgment consistent with this Court's prior
16 Order, docket no. 90, and this Order.

17 In addition, counsel having advised the Court that mediation has resulted in a
18 resolution of plaintiffs' claims against defendant Lexington Insurance Company
19 ("Lexington"), *see* Notice of Agreement to Settle, docket no. 122, and defense counsel

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21 ⁴ For example, plaintiffs allege that defendants "denied coverage without conducting a reasonable
22 investigation" and that defendants' "acts and omissions violate Washington's public policy as set forth in
23 statutes, regulations and case law governing the business of insurance." Compl., docket no. 1 at ¶¶ 3.13,
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1 having confirmed telephonically that the settlement encompasses Lexington's
2 counterclaim,

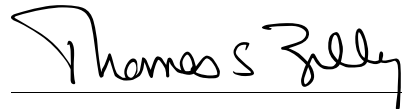
3 NOW, THEREFORE, IT IS ORDERED that plaintiffs' claims against Lexington
4 and Lexington's counterclaim against plaintiffs are DISMISSED with prejudice and
5 without costs. In light of the parties' settlement, Lexington's motion for joinder in
6 Scottsdale's motion for summary judgment, docket no. 119, is STRICKEN as moot.

7 In the event settlement is not perfected, either party may move to reopen and trial
8 will be scheduled, provided such motion is filed within 60 days of the date of this Order.

9 The Clerk is DIRECTED to send a copy of this Order to all counsel of record.

10 IT IS SO ORDERED.

11 Dated this 2nd day of November, 2016.

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14 Thomas S. Zilly
15 United States District Judge
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